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02 APR 2007

In re Application of
Kogel et al.
Application No.: 10/522,106
PCT No.: PCT/EP03/07589
Int. Filing Date: 14 July 2003
Priority Date: 22 July 2002
Attorney Docket No.: 12810-00067-US
For: Method For Obtaining Pathogenic
Resistance In Plants

DECISION

This is in response to the "Request For Reconsideration" filed on 20 November 2006.

DISCUSSION

In a Decision mailed on 02 October 2006, the petition for withdrawal of the holding of abandonment and the request for withdrawal as attorney or agent filed 25 February 2005 was treated as follows:

With regard to the Request For Withdrawal As Attorney Or Agent filed on 25 February 2005, counsel's attention is drawn respectfully to MPEP 402.06, which states in part that

In the event that a notice of withdrawal is filed by the attorney or agent of record, the file will be forwarded to the Technology Center Director where the application is assigned where appropriate procedure will be followed pertaining to the withdrawal. The **withdrawal is effective when approved** rather than when received.

Since the approval by the Director of the withdrawal was not given prior to the mailing of the Form PCT/DO/EO/922, that form was properly mailed to the pre-existing correspondence address of record.

With regard to the Transmittal of Power of Attorney, and attached Power of Attorney, Statement Under 37 CFR 3.73(b), Assignment and Recordation Form Cover Sheet filed by present counsel on 03 June 2005, inspection of the included "Assignment of Application" reveals that it does not specifically identify the application which is being assigned. Therefore, the 03 June 2005 submission did not properly establish the right of the assignee to take action in this case, and so the submission was not effective in changing the pre-existing correspondence address of record.

Since the Form PCT/DO/EO/922 was properly mailed to the correct correspondence of record, the petition to withdraw the holding of abandonment is **DISMISSED**, without prejudice.

In the same Decision, the petition under 37 CFR 1.137(b) was dismissed without prejudice because

Regarding requirement (1), the required reply in this case is the reply required by the Form PCT/DO/EO/922 mailed on 01 July 2005 - specifically, a substitute computer readable form (CRF) of the sequence listing and a statement that the content of the CRF is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter. Since applicants have not filed such a response, requirement (1) has not been met.

Petition To Withdraw Holding Of Abandonment

Petitioner, requesting reconsideration of the petition to withdraw the holding of abandonment, argues that "on the initial filing date of the application which included the 'Assignment of Application' with the proper cover sheet, it would have been impossible for the U.S. application number to be indicated," and that "at the time of filing of the U.S. national stage application on January 24, 2005, the 'Assignment of Application' was already executed and could not have specifically identified the application by its U.S. application number." Petitioner further urges that the Assignment was identified by an internal docket number, 0000053764, and that "the submission of the Power of Attorney and change of correspondence address was not to establish the rights of the assignee, since these were already established with the initial filing of the application, but to appoint new attorneys and change the correspondence address."

Petitioner's attention is respectfully drawn to 37 CFR 3.21, which provides that

37 CFR 3.21 Identification of patents and patent applications.

An assignment relating to a patent must identify the patent by the patent number. An assignment relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, *e.g.*, 07/123,456). An assignment relating to an international patent application which designates the United States of America must identify the international application by the international application number (*e.g.*, PCT/US90/01234). If an assignment of a patent application filed under § 1.53(b) is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by the name of each inventor and the title of the invention so that there can be no mistake as to the patent application intended. If an assignment of a provisional application under § 1.53(c) is executed before the provisional application is filed, it must identify the provisional application by the name of each inventor and the title of the invention so that there can be no mistake as to the provisional application intended.

And to MPEP 302.03, which states that

The patent or patent application to which an assignment relates must be identified by patent number or application number unless the assignment is executed concurrently with or subsequent to the execution of the application but before the application is filed. Then, the application must be identified by ** the name(s) of the inventors, and the title of the invention. If an assignment of a provisional application is executed before the provisional application is filed, it must identify the provisional application by name(s) of the inventors and the title of the invention.